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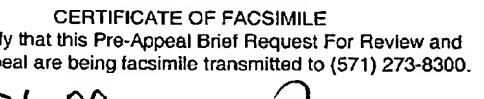
Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) 60469-096PUS1;PA00005222US
<p><b>CERTIFICATE OF FACSIMILE</b> I hereby certify that this Pre-Appeal Brief Request For Review and Notice of Appeal are being facsimile transmitted to (571) 273-8300.</p> <p>on <u>1-26-09</u></p> <p>Signature </p> <p>Typed or printed name <u>Theresa M. Palmateer</u></p>		<p>Application Number 10/598,220</p> <p>Filed 08/22/2006</p> <p>First Named Inventor Paul A. Stucky</p> <p>Art Unit 2863</p> <p>Examiner Sun, Ziuqin</p>

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.  
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

attorney or agent of record.  
Registration number 37,139

attorney or agent acting under 37 CFR 1.34.  
Registration number if acting under 37 CFR 1.34

 Signature

David J. Gaskey

(218) 988-8360

(248) 988-8360

26 JAN 2009

Date

**NOTE: Signatures of all the inventors or assignees of record of the entire Interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below\*.**

\*Total of \_\_\_\_\_ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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60,469-096 PUS1  
PA-000.05222-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Paul A. Stucky  
Serial Number: 10/598,220  
Filed: 08/22/2006  
Group Art Unit: 2863  
Examiner: Sun, Xiuqin  
Title: TENSILE SUPPORT STRENGTH MONITORING  
SYSTEM AND METHOD

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Applicant respectfully requests Pre-Appeal Brief Review because there is no *prima facie* case of obviousness. The rejection of claims 1, 3-9, 11-13 and 16-19 under 35 U.S.C. §103 based upon the proposed combination of the *Robar, et al.* and *Parrini, et al.* reference must be withdrawn. There is no *prima facie* case of obviousness because the *Robar, et al.* reference does not teach what the Examiner suggests. Moreover, the proposed modification to the *Robar, et al.* reference cannot be made because it would change the principle of operation of that reference contrary to MPEP 2143.01(VI).

The Examiner is incorrect in suggesting that the *Robar, et al.* reference teaches a processor that translates electrical characteristics to correspond with a reference temperature to reflect an effect of a temperature in the hoistway. There is no such operation of a processor in the *Robar, et al.* reference. The Examiner admits that the *Robar, et al.* reference does not include

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any indication of a temperature sensor disposed in the hoistway. Given that there is nothing to provide an indication of a temperature in the *Robar, et al.* reference, it is not possible for a processor to perform the function that the Examiner attributes to the *Robar, et al.* reference. Without any such processor function, there can be no *prima facie* case of obviousness. Therefore, even if the proposed combination could be made, the result does not establish a *prima facie* case and the rejection must be withdrawn.

Moreover, even if the Examiner could find the teachings within the *Robar, et al.* reference that the Examiner attributes to that reference, the proposed modification to that reference cannot be made. The Examiner proposes to add a temperature sensor to the teachings of the *Robar, et al.* reference "in order to provide a mechanism for measuring the temperature in a hoistway of an elevator which can be used to detect an emergency condition of the elevator supporting system." (Final Action, page 3) What the Examiner fails to recognize is that the *Robar, et al.* reference is specifically designed to avoid the effects of temperature in the way that it accomplishes its measurements. The fact that resistance is affected by such things as temperature and moisture is mentioned in column 7, lines 4-48, of the *Robar, et al.* reference. That is why the *Robar, et al.* reference operates on the principle of measuring resistance in multiple cords so that relative comparisons between those resistance measurements can be made to eliminate the effect of temperature. In other words, the *Robar, et al.* reference operates on a principle of avoiding the effect of temperature on measurements. Temperature information is not desired. In fact, the opposite is true in the *Robar, et al.* reference. The effects of temperature are eliminated according to the *Robar, et al.* reference technique.

The Examiner proposes to modify the *Robar, et al.* reference by introducing a temperature sensor to determine effects caused by temperature. That would cause the *Robar, et al.*

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*al.* reference to operate in a manner that is the opposite of how it is intended to operate. Such a modification to a reference cannot be made as explained in MPEP 2143.01(VI) because it changes the principle of operation. Additionally, the proposed modification would defeat the ability of the *Robar, et al.* reference to achieve its intended result. The *Robar, et al.* reference is intended to avoid the effects of temperature on resistance measurements. The Examiner's proposed modification would introduce the very temperature that the *Robar, et al.* reference is designed to avoid. Therefore, the Examiner's proposed modification would render the *Robar, et al.* reference incapable of achieving its intended result (i.e., to take measurements in a manner that avoids the effect of temperature).

Therefore, the proposed modification cannot be made and there is no *prima facie* case of obviousness.

Additionally, one skilled in the art would not look to the *Parrini, et al.* reference for some indication on how to modify the *Robar, et al.* reference. The temperature sensor in the *Parrini, et al.* reference is intended to detect a fire condition or other building emergency condition. The temperature detecting in the *Parrini, et al.* reference has nothing to do with the type of measurements taken in the *Robar, et al.* reference. The teachings of the *Parrini, et al.* reference extracted by the Examiner are non-analogous to the teachings of the *Robar, et al.* reference. The proposed combination cannot be made.

There is no *prima facie* case of obviousness. The *Robar, et al.* reference does not teach anything about utilizing temperature. The effects of temperature are avoided according to the teachings of the *Robar, et al.* reference. The Examiner incorrectly suggests that the *Robar, et al.* reference teaches taking temperature into account and then proposes to modify it in a way that

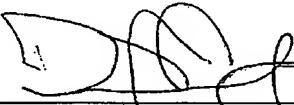
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would render it incapable of achieving its intended purpose and change its principle of operation.

The rejection under 35 U.S.C. §103 must be withdrawn.

Respectfully submitted,

CARLSON, GASKEY & OLDS

By: 

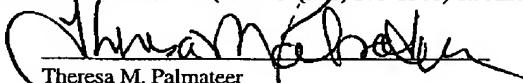
David J. Gaskey  
Registration No. 37,139  
400 W. Maple Rd., Ste. 350  
Birmingham, MI 48009  
(248) 988-8360

Dated: January 26, 2009

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CERTIFICATE OF FACSIMILE

I hereby certify that this Pre-Appeal Brief Request for Review, relative to Application Serial No. 10/598,220, is being facsimile transmitted to the Patent and Trademark Office (Fax No. (571) 273-8300) on January 26, 2009.

  
Theresa M. Palmateer